

FILED

Jan 14 2022

Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCOUNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA7 EDAG ENGINEERING GMBH,
8 Plaintiff,
9 v.
10 BYTON NORTH AMERICA
11 CORPORATION,
12 Defendant.

Case No. 21-cv-04736-EMC (TSH)

DISCOVERY ORDER

Re: Dkt. No. 77

In ECF No. 77, Judge Chen granted Plaintiff and judgment creditor EDAG Engineering GmbH’s (“EDAG’s”) application for a judgment debtor examination of Defendant and judgment debtor BYTON North America Corporation (“BNA”). He ordered “one or more officers, directors, managing agents or other persons who are familiar with the property and debts of BNA to appear personally to furnish information to aid in the enforcement of a money judgment by answering questions about BNA’s property.” *Id.* at 1. Judge Chen further stated that BNA shall designate a witness to “appear personally for a debtor’s examination before a Magistrate Judge to be assigned by the Court at a time, date and place to be determined by that Magistrate Judge . . .” *Id.* at 4.

On January 14, 2022, the Court held a hearing to discuss the scheduling of the examination. Counsel for EDAG and BNA both appeared. Counsel for BNA informed the Court that as of January 1, 2022, BNA has no personnel, a fact that counsel only recently became aware of. Discussion at the hearing indicated that BNA has a parent company that is still active, and that BNA’s counsel is aware of a former BNA employee who knows information relevant to the examination. The Court explained that a parent company can cause its subsidiary to designate a witness under California Code of Civil Procedure § 708.150(a)(1), and it sounds like counsel

1 knows someone who would be a good designee as an “other person[] who [is] familiar with
2 [BNA’s] property and debts.” Cal. Code. Civ. Proc. § 708.150(a)(1).

3 Accordingly, the Court orders that the judgment debtor examination of BNA shall take
4 place on March 11, 2022, starting at 9:00 a.m. The deposition shall take place on the
5 undersigned’s public Zoom webinar. The link to access the webinar is here:

6 <https://cand.uscourts.gov/judges/hixson-thomas-s-tsh/>. The webinar ID is 161 529 8466. The
7 password is 526718.

8 **NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time
9 and place specified in this order, you may be subject to arrest and punishment
10 for contempt of court and the court may make an order requiring you to pay
11 the reasonable attorney’s fees incurred by the judgment creditor in this
12 proceeding.**

13 Pursuant to Cal. Code Civ. Proc. § 708.150(c), the Court further advises BNA of the
14 following:

15 (1) BNA is legally required to make a designation of one or more officers,
16 directors, managing agents, or other persons who are familiar with its property and debts
17 pursuant to Cal. Code. Civ. Proc. § 708.150(a)(1).

18 (2) BNA’s failure to make a designation under Cal. Code. Civ. Proc. §
19 708.150(a)(1) shall result in this order to appear for the examination to be deemed to have
20 been made to, and require the appearance of, the following:

21 (A) If BNA is a corporation registered with the Secretary of State, a natural
22 person named as the chief financial officer in BNA’s most recent filing with the
23 Secretary of State. If no one is so named, a natural person named as the chief
24 executive officer in BNA’s most recent filing with the Secretary of State. If no one
25 is so named, a natural person named as the secretary in BNA’s most recent filing
26 with the Secretary of State.

27 (B) If BNA is not registered with the Secretary of State or its filings with
28 the Secretary of State do not identify a natural person as described in preceding

1 subparagraph, a natural person identified by the judgment creditor as being familiar
2 with the property and debts of the organization, together with an affidavit or
3 declaration signed by the judgment creditor that sets forth the factual basis for the
4 identification of the individual. The affidavit or declaration shall be served on
5 BNA together with this order.

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7 The Court orders EDAG to serve this order on BNA not less than 10 days before the date
8 of the examination, and to file a proof of service showing that it has done so.

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IT IS SO ORDERED.

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11 Dated: 1/14/2022

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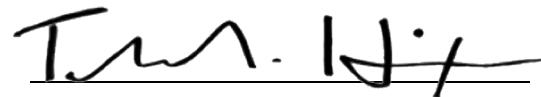
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THOMAS S. HIXSON
United States Magistrate Judge